

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

Toll Free Service Access Codes	)	WC Docket No. 95-155
	)	
Petition of Public Knowledge et al. for Declaratory	)	WT Docket No. 08-7
Ruling Stating Text Messaging and Short Codes are	)	
Title II Services or are Title I Services Subject to	)	
Section 202 Nondiscrimination Rules	)	

**COMMENTS OF CTIA**

Thomas C. Power  
Senior Vice President, General Counsel

Scott K. Bergmann  
Vice President, Regulatory Affairs

Matthew B. Gerst  
Director, Regulatory Affairs

**CTIA**  
1400 16<sup>th</sup> Street NW, Suite 600  
Washington, DC 20036  
(202) 785-0081

December 5, 2016

## TABLE OF CONTENTS

I. Introduction and Summary .....	1
II. Building on the Success of Toll Free Telephone and Messaging Services, Text Messaging Using Toll Free Telephone Numbers Is an Emerging and Innovative Service that Benefits Consumers and Enterprises.....	2
A. The Commission’s Rules for Toll Free Telephone Numbers Were Developed for the Toll Free Voice Market.....	2
B. Consumers View Messaging as a Trusted and Convenient Communications Medium, and Consumer-to-Business Messaging Is On the Rise .....	3
C. Texting to Toll Free Telephone Numbers Offers an Innovative and Effective Service for Enterprises to Engage with Consumers .....	6
III. Somos’s Request for New Rules Cannot Be Granted in a Declaratory Ruling .....	8
IV. The Commission Should Proceed Cautiously in Considering Somos’s Proposal to Regulate the Registration and Routing of an Information Service Under a Title II Regime.....	10
V. The Commission Should Consider Whether the Market Would Be Served by Somos’s Proposals.....	11
A. The Marketplace Today Supports Toll Free Voice Subscriber’s Choices When Text-Enabling Their Toll Free Numbers .....	11
B. The Commission Should Be Cautious About Creating a Government Mandated Monopoly Where Competitive and Innovative Solutions Exist in the Evolving Messaging Ecosystem.....	12
VI. Conclusion .....	14

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

Toll Free Service Access Codes	)	WC Docket No. 95-155
	)	
Petition of Public Knowledge et al. for Declaratory	)	WT Docket No. 08-7
Ruling Stating Text Messaging and Short Codes are	)	
Title II Services or are Title I Services Subject to	)	
Section 202 Nondiscrimination Rules	)	

**COMMENTS OF CTIA**

**I. INTRODUCTION AND SUMMARY**

CTIA<sup>1</sup> submits these comments in response to the Wireline Competition Bureau's ("Bureau's") *Public Notice* seeking input<sup>2</sup> on the Petition for Declaratory Ruling<sup>3</sup> of Somos, Inc. ("Somos") in the above-captioned proceeding. Somos's Petition asks the Federal Communications Commission ("Commission") to issue a Declaratory Ruling establishing that (1) Responsible Organizations ("RespOrgs") should control how business subscribers of toll free

---

<sup>1</sup> CTIA<sup>®</sup> ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21<sup>st</sup>-century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> *Wireline Competition Bureau Seeks Comment on Somos, Inc. Petition for Declaratory Ruling Regarding Registration of Text-Enabled Toll Free Numbers*, WC Docket No. 95-155, WT Docket No. 08-7, DA 16-1259 (WCB rel. Nov. 4, 2016).

<sup>3</sup> Petition of Somos, Inc. for a Declaratory Ruling Regarding Registration of Text-Enabled Toll Free Numbers, CC Docket No. 95-155 (filed Oct. 28, 2016) ("Petition").

telephone services use their toll free telephone numbers for all services, including information services such as messaging, and (2) the routing of messaging, an information service, to toll free telephone numbers must be registered in Somos's Text and Smart Services ("TSS") Registry.

These new requirements would go well beyond merely "terminating a controversy or removing uncertainty."<sup>4</sup> As such, they cannot be imposed in a declaratory ruling. Moreover, Somos's Petition raises significant jurisdictional and policy questions. The Commission cannot impose Title II telecommunications service regulations on an information service such as messaging. Further, CTIA is currently leading a consensus-building effort among messaging ecosystem stakeholders on the issues in the Petition, raising questions about whether any Commission intervention is appropriate at this time. Finally, nothing in the record suggests that Somos's proposed new regulatory requirements would produce a better result than the current marketplace framework, which is delivering innovative services to consumers and businesses.

## **II. BUILDING ON THE SUCCESS OF TOLL FREE TELEPHONE AND MESSAGING SERVICES, TEXT MESSAGING USING TOLL FREE TELEPHONE NUMBERS IS AN EMERGING AND INNOVATIVE SERVICE THAT BENEFITS CONSUMERS AND ENTERPRISES**

### **A. The Commission's Rules for Toll Free Telephone Numbers Were Developed for the Toll Free Voice Market**

It is well understood that toll free numbers have increased businesses' ability to connect with consumers. Using specially designated telephone numbers from the North American Numbering Plan ("NANP"),<sup>5</sup> businesses can subscribe to toll free telephone services that pay for consumers' long-distance calls to the business from any NANP location.

---

<sup>4</sup> 47 C.F.R. § 1.2(a).

<sup>5</sup> See 47 C.F.R. § 52.5(d).

The Commission designated the SMS/800 database to reserve and manage the routing information for toll free numbers in order to create a competitive toll free telephone service market for business subscribers. The database allows “toll free customers to change their [long distance] service providers without having to change their numbers,” helping to ensure competition.<sup>6</sup> Additionally, to foster a competitive long-distance toll free telephone service market, the Commission authorized RespOrgs to manage a business subscriber’s toll free telephone number in the SMS/800 database.<sup>7</sup> The SMS/800 database does not identify the business subscribers to whom toll free telephone numbers are assigned. Instead, the SMS/800 database identifies the RespOrg, and the RespOrg in turn manages the toll free telephone number and the routing information for calls to the toll free telephone number (i.e., the long distance carrier selected by the business subscriber to carry traffic to the number).<sup>8</sup> The toll free telephone system has been beneficial for businesses and consumers alike.

**B. Consumers View Messaging as a Trusted and Convenient Communications Medium, and Consumer-to-Business Messaging Is On the Rise**

In recent years, messaging has emerged as a preferred means of communication for consumers. In a 2016 survey by Morning Consult sponsored by CTIA, consumers said they use wireless messaging, including SMS and MMS, to communicate with friends, family and

---

<sup>6</sup> See, e.g., *Toll Free Service Access Codes, Petition to Change the Composition of SMS/800, Inc.*, Order, 28 FCC Rcd 15328, 15329-30 ¶¶ 4-5 (2013) (“2013 SMS/800 Order”).

<sup>7</sup> 47 C.F.R. § 52.101(b) (role of RespOrg is to “manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber”); see also *Provision of Access for 800 Service*, Order, 8 FCC Rcd 1423, 1428 ¶¶ 41-42 (1993) (“1993 SMS/800 Order”).

<sup>8</sup> *Id.*

businesses more often than voice calls, messaging apps, email and social media.<sup>9</sup> This is evidenced by the 1.89 trillion text messages sent in 2015 alone.<sup>10</sup>

Significantly, surveyed consumers believe wireless messaging is a trusted communications medium.<sup>11</sup> Consumers said that they receive more wanted communications through wireless messaging, and receive more unwanted communications on voice calls and email; they also believe wireless messaging is reliable, convenient, and responsive.<sup>12</sup> In

---

<sup>9</sup> A majority of registered voters use text messaging multiple times a day, the highest of any communications form (including email and voice calls) tested by the survey. Memorandum from Morning Consult to CTIA (Nov. 18, 2016) (on file with the author) (“Morning Consult Poll”) (detailing a November 11-12, 2016 national sample poll of 2,000 registered voters weighted to approximate a target sample of employed adults based on race/ethnicity, gender, educational attainment, and region, with a margin of error of plus or minus 3 percentage points); *see also* *U.S. Smartphone Use in 2015*, Pew Research Center, at 8, 33 (Apr. 1, 2015), <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/> (noting that “[t]ext messaging is the most widely-used smartphone feature,” and “is also the most frequently-used.” Nearly all of the smartphone owners in the Pew survey (97 percent) used text messaging during the study period, and they used their devices for texting more than email or Internet use or calling.).

<sup>10</sup> CTIA, *Annual Wireless Industry Survey Overview* (Oct. 20, 2016), <http://www.ctia.org/industry-data/ctia-annual-wireless-industry-survey>. Messaging’s dramatic growth also reflects this truth; in 2005, 81.21 billion annual text messages were sent, while in 2015 that number was almost doubled monthly (156.7 billion). *Id.*

<sup>11</sup> This is evidenced by the fact that 59% of registered voters text friends and family multiple times a day, using messaging to stay in touch more than any other medium. Morning Consult Poll at 1. Consumer trust in messaging is also demonstrated by the fact that adults generally respond to most text messages in less than 30 minutes – the fastest of any method “tested by far.” *Id.* Finally, voters *also* say text messaging “is among the most secure form of communications for transmitting personal or financial information” – even further evidence of consumer trust in the messaging ecosystem. *Id.*; *see also*, e.g., Opposition of CTIA – The Wireless Association®, WT Docket No. 08-7, at 8-12 (filed Nov 20, 2015) (“CTIA Opposition”) (in particular, the section entitled “Messaging Is Increasingly the Most Popular and Trusted Way to Communicate”).

<sup>12</sup> *See supra* note 10; *see also*, e.g., Maria Vergelis et al., *Kaspersky Security Bulletin: Spam in 2015*, Securelist (Nov. 12, 2015), <https://securelist.com/analysis/kaspersky-security-bulletin/69225/kaspersky-securitybulletin-spam-in-2014/> (reporting 66.76 percent of emails were spam in 2014, with U.S. being targeted the most of any country); Aine Doherty, *SMS Versus Email Marketing*, Business2Community (July 28, 2014),

addition, consumers said wireless messaging is faster and easier than other communications services, including voice calls, social media and video calls.<sup>13</sup>

Consumers have also embraced texting as a way to communicate with businesses. Commercial texting has risen dramatically in popularity; indeed, a majority of surveyed consumers say their text message-based communications with businesses are increasing.<sup>14</sup> This has led to a number of innovative uses, ranging from two-factor authentication to airline delay notices and credit card fraud alerts. Call centers leveraging toll free texting and API connectivity for high-volume throughput have experienced improved productivity – one call center reported an 80 percent reduction in voicemails after launching business texting with a 4.9 out of 5 customer approval rating for text support.<sup>15</sup>

Consumers' confidence in texting derives in part from extensive industry efforts to guard against spam in the text messaging space.<sup>16</sup> It is estimated that these actions blocked between

---

<http://www.business2community.com/digital-marketing/sms-versus-email-marketing-0957139#!bth7SG#CcOT53BPhyU6jqFi.97> (one percent of SMS marketing messages are spam); AT&T, *Connecting with Text: The Shift to Landline and Toll free Business Texting*, at 2 (Jan. 2016), <https://www.business.att.com/content/whitepaper/business-texting-market-survey-report.pdf> (“AT&T White Paper”) (“while 90 percent of major companies leave and receive voicemail as a primary means of communicating with customers, their customers aren’t listening”).

<sup>13</sup> Most adults associate text messaging with the terms “easy,” “immediate,” and “personal.” Morning Consult Poll at 1; *see also* AT&T White Paper at 2.

<sup>14</sup> Morning Consult Poll at 1; OpenMarket, *The Resurgence of E2P Messaging and What It Means for Your Business* (Sept. 10, 2015), <http://www.openmarket.com/blog/the-resurgence-of-e2p-messaging-and-what-it-means-for-your-business/> (“OpenMarket Blog”).

<sup>15</sup> AT&T White Paper at 6; *see also* OneReach, *The High Demand for Customer Service via Text Message* (Aug. 2014), <https://onereach.com/resources/high-demand-for-text-message-2014-report> (“OneReach Report”).

<sup>16</sup> *See, e.g.*, Messaging, Malware and Mobile Anti-Abuse Working Group, *M<sup>3</sup> AAWG Mobile Messaging Best Practices for Service Providers* (Aug. 2015).

1.3 billion and 1.6 billion messages in 2015 alone.<sup>17</sup> Such industry efforts demonstrate the fundamentally different manner in which consumers engage with messages.<sup>18</sup> It is industry's efforts that explain network security provider Cloudmark's observation that, for SMS messages alone, the "open rate" is more than 90 percent, most often within 15 minutes of receipt – whereas email has a comparatively dismal open rate of 20-25 percent within 24 hours of receipt.<sup>19</sup>

**C. Texting to Toll Free Telephone Numbers Offers an Innovative and Effective Service for Enterprises to Engage with Consumers**

Since 2013, toll free numbers have become increasingly popular as recognized identifiers for businesses to communicate by text with customers.<sup>20</sup> Traffic volumes for business texting

---

<https://www.m3aawg.org/sites/default/files/M3AAWG-Mobile-Messaging-Best-Practices-Service-Providers-2015-08.pdf>.

<sup>17</sup> CTIA Opposition at 20.

<sup>18</sup> See, e.g., Letter from Steven A. Augustino and Avonne S. Bell, Counsel for Zipwhip, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-7, at 4-5 (filed Oct. 20, 2016) ("Zipwhip *ex parte*"); Letter from Anna Henningsgaard, Founder & CEO, Fact Atlas, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-7, at 1-2 (filed Dec. 21, 2015); Reply Comments of Mobile Future, WT Docket No. 08-7, at 1 (filed Dec. 21, 2015); Letter from Alan Wilson, Att'y Gen. of South Carolina, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-7, at 1 (Dec. 21, 2015) (noting that impeding industry's ability to protect consumers from messaging spam would "have negative consequences on many Americans"); Reply Comments of Verizon, WT Docket No. 08-7, at 2-6 (filed Dec. 21, 2015) (noting that the record confirms the current, industry-led approach has been successful); cf. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8021 ¶ 119 (2015) (praising "carrier efforts to implement protections against unwanted text messages").

<sup>19</sup> Cloudmark, *SMS Spam Overview: Preserving the Value of SMS Texting*, [https://www.cloudmark.com/releases/docs/whitepapers/SMS\\_Spam\\_Overview.pdf](https://www.cloudmark.com/releases/docs/whitepapers/SMS_Spam_Overview.pdf) (last visited Nov. 29, 2016). Similarly, response times for texts are equivalently fast – generally, 30 minutes. Morning Consult Poll at 1.

<sup>20</sup> 33 percent of small businesses, 78 percent of businesses with 100-499 employees, and 90 percent of businesses with more than 500 employees support one or more toll free numbers. AT&T White Paper at 4.



are currently growing at 300 percent per year.<sup>21</sup> Not only is toll free text messaging increasingly embraced by major brands,<sup>22</sup> business messaging is expected to develop into a \$60 billion industry by 2018.<sup>23</sup> The role of text-enabled toll free numbers in the enterprise space cannot be underestimated when 85 percent of consumers *prefer* to receive a text over a phone call or an email,<sup>24</sup> at least 77 percent of text-capable 18-34-year-olds look favorably on companies offering text capabilities,<sup>25</sup> and more than a quarter of all voicemails already go completely ignored.<sup>26</sup> Despite this rapid growth, however, enabling toll free numbers for texting is still a nascent and developing service, in contrast to legacy toll free voice services.

Since the inception of texting to toll free numbers, industry practices have evolved in the marketplace to ensure the voice subscriber has control over whether their toll free telephone number is used for messaging. For example, CTIA's SMS Interoperability Guidelines encourage stakeholders to prevent toll free telephone number assignment conflicts with the messaging ecosystem by recommending that only toll free telephone numbers in either "Reserved" or "Working" status for toll free telephone service be text enabled.<sup>27</sup> The guidelines also provide

---

<sup>21</sup> AT&T White Paper at 2; Zipwhip *ex parte* at 2.

<sup>22</sup> See, e.g., Paul Sawers, *Google's Launching Click-to-Message Ads on Google Search That Connect Consumers with Companies over SMS*, VentureBeat (Oct. 18, 2016), <http://venturebeat.com/2016/10/18/google-click-tomessage-ads/>; see also Zipwhip *ex parte* at 2 (noting Zipwhip's work for major brands including Nestle and Allstate).

<sup>23</sup> See OpenMarket Blog.

<sup>24</sup> AT&T White Paper at 2-3.

<sup>25</sup> See OneReach Report.

<sup>26</sup> *Id.* at 7.

<sup>27</sup> CTIA, *SMS Interoperability Guidelines v. 3.2.2*, at 19 § 4.4.5 (Jan. 1, 2015), [http://www.ctia.org/docs/default-source/default-document-library/sms\\_interoperability\\_guidelines\\_v3-2-2\\_jan\\_2015-as-posted.pdf](http://www.ctia.org/docs/default-source/default-document-library/sms_interoperability_guidelines_v3-2-2_jan_2015-as-posted.pdf) ("SMS Interoperability Guidelines").

that the authority to control text-enabling of a toll free number “resides with the subscriber who is the holder of record” of that number.<sup>28</sup> Consistent with these guidelines, Zipwhip has stated that, before enabling messaging to toll free telephone numbers, it takes steps to verify that the toll free number is actively in use for voice and is authorized for messaging by the toll free service subscriber.<sup>29</sup> By contrast, Somos proposes “that the exclusive entity with authority to text-enable a Toll-Free number [should be] the Resp Org responsible for the assignment and routing of that number” for voice services, not the voice subscriber.<sup>30</sup>

### **III. SOMOS’S REQUEST FOR NEW RULES CANNOT BE GRANTED IN A DECLARATORY RULING**

Somos’s Petition is framed as a request for declaratory ruling, but it asks the Commission to adopt new rules that only could be granted in a rulemaking proceeding. Thus, the Petition must be dismissed on procedural grounds.

Declaratory rulings are limited to “terminating a controversy or removing uncertainty.”<sup>31</sup> But Somos wants the Commission to do far more than that. Somos asks the Commission to adopt new rules that (1) “a provider may not text-enable a Toll-Free number without seeking authorization from the Responsible Organization with assignment and routing authority for that

---

<sup>28</sup> SMS Interoperability Guidelines, at 18 § 4.4.3.

<sup>29</sup> Zipwhip *ex parte* at 4.

<sup>30</sup> Petition at 11. It is worth noting that both Somos and Zipwhip propose to deviate from the existing SMS Interoperability Guidelines, although their proposals differ. While industry guidelines are intended to reflect and reinforce industry practices, they are not intended to freeze those practices in place indefinitely. As new technologies are developed, and new entrants and business practices emerge, CTIA works with stakeholders to update the guidelines to account for such innovations while preserving core principles.

<sup>31</sup> 47 C.F.R. § 1.2(a). The rule references “section 5(d) of the Administrative Procedure Act,” currently codified at 5 U.S.C. § 554(e) (“The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.”).

Toll-Free number” and (2) “any messaging provider that text-enables a Toll-Free number is responsible for ensuring that the number is properly registered with the Toll-Free Neutral Administrator’s Text and Smart Services (“TSS”) registry.”<sup>32</sup>

The novelty of Somos’s proposed new requirements is inescapable despite its attempts to explain why these new rules are consistent with or analogous to existing Commission toll free numbering rules.<sup>33</sup> Somos itself acknowledges that its TSS registry is a new product that is “adjunct to” the SMS/800 database established pursuant to Commission rule.<sup>34</sup> It cannot explain how the existing rules could require the use of a database that did not previously exist. Somos also admits that it intends to revise the SMS/800 tariff to include these requirements – thus acknowledging that these actions have not been required previously.

More fundamentally, however, Somos is asking the Commission to impose a specific Title II regulatory structure on the process for enabling toll free numbers for an information service, text messaging, beyond the four corners of any existing rules. The Petition would not terminate a controversy or remove uncertainty – it would create both. Irrespective of the merits of Somos’s proposed requirements, there is no question that the Petition calls for the creation of new rules. For this reason alone, the Petition must be denied.

---

<sup>32</sup> Petition at 1.

<sup>33</sup> Petition at 11-15 (describing the RespOrg authorization requirement as consistent with the rule defining RespOrgs as entities with responsibility for managing records in the SMS/800 database, and mandatory use of the TSS registry as consistent with the statutory requirement that numbering administration be competitively neutral).

<sup>34</sup> Petition at 9-10 (describing the TSS registry as “ancillary to” the SMS/800 database, with access granted based on a certification process that is separate from the RespOrg certification process).

#### **IV. THE COMMISSION SHOULD PROCEED CAUTIOUSLY IN CONSIDERING SOMOS'S PROPOSAL TO REGULATE THE REGISTRATION AND ROUTING OF AN INFORMATION SERVICE UNDER A TITLE II REGIME**

The new requirements that Somos seeks to impose raise significant policy questions about the proper regulation of text messaging, an information service, under legacy Title II regulations. As CTIA has explained in detail elsewhere, text messaging involves core information service functions including data storage and retrieval and changes to the form and content of messages.<sup>35</sup> The Commission's toll free numbering rules, by contrast, were established to govern voice telephony – a classic Title II telecommunications service – under a Title II framework.<sup>36</sup> The Commission should respect the statutory structure which bars the application of Title II regulations to information services.<sup>37</sup>

Somos refers to the Commission's rules regarding the routing of telecommunications services such as toll free voice traffic,<sup>38</sup> but it does not provide a sufficient jurisdictional or technical basis for applying these rules to information services. Similarly, when it comes to registering the routing of texting on toll free numbers, Somos does not provide a technical reason that RespOrgs need to intermediate texting services (which are routed in a fundamentally different manner from voice calls). Indeed, Somos's argument raises the very concerns identified by Commissioner Pai in his objection to the *Open Internet Order's* interconnection

---

<sup>35</sup> CTIA Opposition at 35-39.

<sup>36</sup> See *supra* Section II.A.

<sup>37</sup> See e.g., *Verizon v. FCC*, 740 F.3d 623, 650 (D.C. Cir. 2014).

<sup>38</sup> *Id.* at 12.

regulations – the proposal would extend telecommunications regulation well beyond any telecommunications element of the service.<sup>39</sup>

Somos also asserts that it is going to include the TSS Registry requirement in the SMS/800 tariff, and notes that, under the filed rate doctrine, this will give the requirement the force of law.<sup>40</sup> Here too, however, the petition raises novel questions about the application of classic common carrier regulation to the routing of an information service. In sum, Somos asks the Commission to impose Title II regulation on an information service, despite Congress’s direction that information services are not subject to Title II. The Commission should be very skeptical of such a request – particularly in a situation where, as here, the market is working effectively to protect the interests of subscribers and consumers.

## **V. THE COMMISSION SHOULD CONSIDER WHETHER THE MARKET WOULD BE SERVED BY SOMOS’S PROPOSALS**

The Commission should be particularly skeptical of imposing any new regulation in an environment where, as here, the market is functioning effectively. As discussed above, existing industry practice serves the same goals – preventing toll free telephone number assignment conflicts – as the Commission’s rules serve with regard to voice traffic on toll free numbers.<sup>41</sup> As described below, Somos does not establish a basis for imposing a new regulatory framework.

### **A. The Marketplace Today Supports Toll Free Voice Subscriber’s Choices When Text-Enabling Their Toll Free Numbers**

As an initial matter, it seems counterintuitive that business subscribers’ interests would be served by granting Somos’s request to mandate that the voice RespOrg serve as a gatekeeper

---

<sup>39</sup> See *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5960 (Dissenting Statement of Commissioner Ajit Pai).

<sup>40</sup> Petition at 12-13.

<sup>41</sup> See *supra* Sections II.B.-C.

to the subscriber's decision to use a different service provider to enable the toll free number for text messaging. CTIA's SMS Interoperability Guidelines have played a productive role in facilitating a viable market for text-enabled toll free numbers that recognizes the primary authority of the business subscriber to use its toll free telephone number for messaging and other services while also providing transparency to RespOrgs who manage the toll free number for toll free telephone services.<sup>42</sup> Further, the SMS Interoperability Guidelines seek to promote business subscribers' ability to choose a messaging service provider without regard to the subscriber's RespOrg for toll free telephone service.<sup>43</sup> Certainly nothing in the Commission's rules require or contemplate that RespOrgs control how a voice subscriber uses a toll free telephone number for purposes beyond the RespOrg's established role to manage toll free numbers for toll free telephone services.<sup>44</sup> For these reasons, CTIA believes that the current processes for enabling toll free numbers for messaging are aligned with the Commission's goals for managing toll free telephone numbers to support toll free telephone service.

**B. The Commission Should Be Cautious About Creating a Government Mandated Monopoly Where Competitive and Innovative Solutions Exist in the Evolving Messaging Ecosystem**

In addition, if the Commission mandated use of the TSS registry, Somos would collect revenue from each entity that would be required to query its database in order to register toll free numbers or route texts to or from toll free numbers. The Commission should be cautious in

---

<sup>42</sup> *SMS Interoperability Guidelines* at 18 § 4.4.3

<sup>43</sup> *Id.*

<sup>44</sup> *1993 SMS/800 Order*, 8 FCC Rcd at 1423 ¶ 5 (describing the voice routing functions that the SMS/800 database provides); 47 C.F.R. § 52.101(b) (role of RespOrg is "to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber"); *see also 2013 SMS/800 Order*, 28 FCC Rcd at 15330 ¶ 6 (RespOrgs "reserve numbers and create or modify [routing] records for toll free subscribers").

considering Somos's request, which would effectively create a monopoly messaging registration system by regulatory mandate, rather than allowing the ecosystem to consider the most efficient and effective means to enable toll free text messages.

Further, the Commission should not assume that the approach to selecting a single vendor of toll free registry services in the context of voice telecommunications services should be extended to innovative and evolving information services such as messaging. A competitive and flexible messaging ecosystem, including messaging to toll free numbers, can provide significant benefits to businesses and consumers, while protecting the interests of the toll free telephone number subscriber and consumers from unwanted messages.<sup>45</sup> CTIA's ongoing effort to adopt new principles and best practices as part of the SMS Interoperability Guidelines is intended to do just that.<sup>46</sup> Commission intervention could inhibit industry's ability to build consensus and facilitate the continued growth of an innovative and evolving messaging services.

---

<sup>45</sup> See *supra* Sections II.B.-C.

<sup>46</sup> See Letter from Scott K. Bergmann, Vice President – Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-7, at 4 (filed Oct. 31, 2016) (explaining the “efforts of [CTIA’s] Messaging Working Group . . . to develop new principles and best practices that reflect and encourage an evolving wireless messaging ecosystem,” and noting that CTIA “is working with toll free ecosystem stakeholders, including Somos, Zipwhip, and RespOrgs, to identify key principles that uphold the integrity of toll free telephone numbers, provide transparency to RespOrgs and protect consumers from unwanted messages from toll free telephone numbers.”).

## **VI. CONCLUSION**

For the reasons discussed above, the Petition is procedurally improper and must be denied. Moreover, Somos's proposed new requirements raise troublesome policy and legal questions.

Respectfully submitted,

/s/ Scott K. Bergmann

Thomas C. Power  
Senior Vice President, General Counsel

Scott K. Bergmann  
Vice President, Regulatory Affairs

Matthew B. Gerst  
Director, Regulatory Affairs

**CTIA**  
1400 16<sup>th</sup> Street NW, Suite 600  
Washington, DC 20036  
(202) 785-0081

December 5, 2016